



**MINUTES
CITY COUNCIL MEETING
November 16, 2021**

CALL TO ORDER

The meeting was called to order at 6:36 pm.

Present: Mayor: Charlie Miner; Council: Jahn Dyvik, Mike Feldmann, Gina Joyce, and Deirdre Kvale

Staff Present: City Administrator: Scott Weske; and City Clerk: Jeanette Moeller

Absent: None

PLEDGE OF ALLEGIANCE

MAYOR'S COMMENTS – LONG LAKE NEWS, MEETING REVIEW AND UPDATES

Mayor Miner offered the following comments and updates:

A Holiday Tree Lighting Event will be held at Holbrook Park in early December, which will be discussed later during the agenda.

The City Council met in a work session prior to the regular meeting at which the Council had discussed possibilities regarding the future of Fire Department services.

APPROVE AGENDA

A motion was made by Feldmann, seconded by Miner, to approve the agenda as presented. Ayes: all.

CONSENT AGENDA

The Consent Agenda consisted of:

- A. Approve Minutes of November 1, 2021 City Council Meeting
- B. Approve Vendor Claims and Payroll
- C. Accept the Retirement of Firefighter John Hall from the Long Lake Fire Department
- D. Terminate the Employment of Paid-On-Call (POC) Firefighter Phil Steahl
- E. Adopt Resolution No. 2021-48 Conditionally Appointing Candidates Anthony AJ Rewerts, Adam Hayden, Amanda Straka, and Paul Morse to the Position of Paid-On-Call Firefighter for the City of Long Lake Fire Department
- F. Adopt Resolution No. 2021-50 Accepting a Donation to the Long Lake Fire Department in the Amount of \$200 from Bruce R. Kelley
- G. Adopt Resolution No. 2021-49 Approving a Salary Step Increase for Finance/Utility Billing Officer Amanda Nowezki from Step 4 to Step 4 of the Salary Pay Plan Due to Having a Satisfactory Performance Review

A motion was made by Dyvik, seconded by Feldmann, to approve the Consent Agenda as presented. Ayes: all.

OPEN CORRESPONDENCE

No one was in attendance to address the City Council during Open Correspondence.

BUSINESS ITEMS

Special Event Permit Request for the 2021 Holiday Tree Lighting Event

City Clerk Moeller recalled that this event used to be held in Nelson Lakeside Park. Thomas Joyce, on behalf of the Chamber of Commerce, has applied for a Special Event Permit to host the Holiday Tree Lighting Event in Holbrook Park on Friday, December 3, 2021 from 5:00 pm to 7:00 pm, with set up and clean up taking place before and after. She reported that the event will offer warm beverages and refreshments, holiday themed music, fire pits, and a ceremonial tree lighting. The application narrative also mentioned that there could be some carolers and a possible visit from Santa at the event. Staff and the Wayzata Police Chief have reviewed the application and have recommended approval of the permit, with conditions as noted in the staff report. She explained that the Chamber of Commerce is the sponsoring organization for the application, but this event would not be happening without the efforts of Thomas Joyce and the Park Board who are working in partnership with the Chamber of Commerce.

Council member Joyce commented that she thought Moeller had indicated in the past that she could advertise the event across the City's various channels of communication.

Moeller confirmed that she would be able to do so once Council has taken action to approve the Special Event Permit.

Council member Kvale asked whether the tree previously used at Nelson Lakeside Park would still be lit up.

Moeller responded that she did not believe so; however, the Orono Lions Club had asked if the City would allow them to install lights in Nelson Lakeside Park again like they had done last year. Their intent would be to light up a fun area of the park again, and Public Works Director Diercks granted them permission to do so subject to the same conditions of approval as last year. People will still see holiday lights at the park, but she believes the former holiday tree will no longer be lit.

Council member Joyce reviewed some of the donations that will be given for the event from local businesses, such as hay bales and hot chocolate, and noted that they are hopeful for some marshmallows as well.

A motion was made by Feldmann, seconded by Joyce, to adopt Resolution No. 2021-51 approving issuance of Special Event Permit #S2021-10 for the 2021 Holiday Tree Lighting Event to be held in Holbrook Park on Friday, December 3, 2021; and to approve issuance of a Noise Variance Permit authorizing the use of sound amplification equipment for broadcasting holiday music and announcements during the event. Ayes: all.

Mayor Miner noted that he and Moeller have also been working on details for a home holiday decorating contest event.

Discuss Draft of Proposed Changes to City Code Chapter 26 – Planning and Development, Article II, Consultant Development Fees

Moeller explained that updating the referenced Code section was an item on the City's goals list. The Council had adopted an updated Consultant Development Fees ordinance a few years ago but as the City has implemented it and began working with it, there are some things that have come to light and some language improvements that could be made. She explained that the suggested changes are underlined in the draft document and are largely based on an ordinance that is being used by the City of Mahtomedi. Regarding the establishment of escrow fee amounts, staff feels it is important for them to have discretion in how the amounts are established rather than just being a

flat fee. She gave examples of development applications that come in complete and others that have required Planning Consultant feedback even before the application has officially been submitted. She stated that there are times when staff knows that an application will take many more hours than others based on their level of interactions with the applicants. In discussion of this situation, Planning Consultant Rybak provided Moeller with an example from Mahtomedi that allows the City Administrator to set the escrow amount with assistance from the city's consultants. Moeller indicated that staff has found that the current \$1,500 escrow is adequate sometimes, but when it isn't, it can be problematic because staff then has to spend time chasing down the additional escrow fees. The proposed ordinance changes are an attempt for staff to have to do less billing and chasing of the escrow fees. The proposed revisions also more firmly state the billing process clarifying that if the City bills a developer/applicant for any additional incurred costs, payment must be remitted within 30 days of the billing. Staff also recommends adding a statement that the City Administrator has the authority and discretion to stop professional consultant work, for example, if the City has not received required escrow or does not have adequate escrow funds in place.

Moeller added that she also wanted to highlight Section 26-133, Exceptions, of the Code section and explained that her proposal at a minimum would be to add a few underlined words to clarify that the exception would be granted to homestead properties applying for variances only. She stated that when the ordinance was adopted a few years back, the Council at that time felt that it was warranted that applications involving a request for a single platted residential lot classified as homestead would not be responsible for costs incurred by the City beyond the initial application fee. She believed that at a minimum, it needs to be defined that what they are talking about in this section is really a variance request. Staff would recommend language changes make it very clear that they are not talking about a minor subdivision or for something like putting in a mother-in-law apartment. She noted it is worth considering that every application results in costs incurred by the City, so a policy question for the Council is whether they want to continue this exception or somehow address it differently.

Council member Kvale asked if the City had ever lost money on these exceptions.

Moeller responded that this situation is rare, but she thinks that it could become more commonplace as properties are turning over ownership and staff is trying to be thoughtful as this Code is updated by giving consideration to what may be coming.

Council member Kvale asked if there is a cost limit beyond the application fee, such as a triggering event, so if billing comes in over a certain amount then the City would actually charge a fee to those applications.

Moeller confirmed that would be a possible way to handle these applications and gave the example of saying something like, 'consultant fees incurred by the City above a certain dollar amount would be the responsibility of the applicant'.

Council member Feldmann stated that in looking at the Exceptions section, he thinks about projects like The Landings.

Moeller clarified that this is why she wanted to specifically state the exception is for a variance request, because she feels the 'non-commercial purpose' alone is a bit vague. She noted that staff is looking for firm direction from the Council on the proposed ordinance changes because they would like to get it noticed and adopted by year end.

Council member Kvale commented that if the applicants have multiple iterations that will involve input from the consultants it may be a good idea, if it got expensive, for them to have WSB as their own designer instead of hiring somebody else.

Council member Dyvik asked whether someone came in and wanted to build a big house that would need variances would also get this exception.

Moeller confirmed that is the way it is currently written for a single homestead property. She stated this is why she would like the ordinance to at least state that this is about a variance request.

Council member Dyvik asked if new construction would also fall under the exception.

Moeller replied that she would say the new construction opportunities will be few as there are limited single lots available, but the exception would technically apply as it is written now. She noted that she could see a scenario where a resident, because they do not have a lot of experience in this field, could incur a fair amount of consultant expenses because they are relying on the City's consultants for all the information that they do not know going into the process.

Council member Dyvik pointed out that he thought the City wanted to stay away from having a set dollar amount included in the ordinance, because that amount can become outdated.

Moeller responded that Council member Dyvik was correct, but the Council could revisit the amount as a Code amendment if necessary.

Mayor Miner questioned if an amount could simply be included in the fee schedule.

Moeller stated that would be possible, but the Council would need to set the policy within the Exceptions section. She stated that she would have to consult with City Attorney Thames to see how it would be best to word it and noted that it may be easier to put it in Code and just revisit it when needed.

Council member Kvale questioned whether the consultant fees were only limited to the construction phase.

Moeller clarified that the proposed language changes also address replenishment of depleted escrow funds or payment of consultant costs incurred prior to final inspection and issuance of Certificates of Occupancy. She noted that the intent of the language changes would be to state that escrow funds will not just be used at the time of application, and to better clarify that they are also applicable through the construction phase and not just the application phase.

Council member Feldmann asked if construction stopped the second before the Certificate of Occupancy is issued.

Moeller indicated that is essentially correct because when construction stops, a Certificate of Occupancy is the final step. She observed that staff has learned a lot from working through The Landings at Long Lake subdivision, and the intent is to more firmly set forth that the escrow funds will be applied to consultant fees incurred by the City for everything from application all the way through Certificate of Occupancy.

Mayor Miner noted that he read something yesterday regarding a circumstance in Wayzata where they granted a variance to a setback requirement for an 8,000 square foot home that was built on Lake Minnetonka and now the neighbors are suing the City. He stated that in that case they will incur a lot of legal fees.

Council member Kvale stated that perhaps the language should also include a fee to cover a lawsuit.

Moeller replied that she would be concerned doing so may be pushing what is typically included in Code a bit. She agreed that the point about referencing the Certificate of Occupancy in other sections would be appropriate.

Council member Feldmann asked how many projects would have been affected if the Exceptions section was not even included and no exception was granted for single homestead properties.

Moeller stated that she could recall only one in the last eight years.

Council member Feldmann asked what the expense was for that one incident she can remember.

Moeller was unable to recall the specifics of the application in detail, but noted that the City may still have had a full-time planner when that application came forward. She explained that the City did not have much of an ordinance regarding consultant fees and escrow before the current language was adopted in 2017.

Weske remembered one other instance where a homeowner put a studio above a garage.

Moeller stated she believed that application was for both a CUP and a variance. She explained that the applicant was using the garage addition essentially as a home office. Under the Exceptions as proposed, the CUP would not qualify, but the variance would.

Council member Feldmann commented that he sees the Council as having three options: keep the proposed language as it is; tweak what is proposed; or delete the whole Exceptions paragraph. He pointed out that this has only affected one or two people in the last decade, and it feels a bit like playing with fire as under the current Exceptions language a developer could come in and make arguments about whether they can technically be part of the Exceptions. He asked how much staff time it would take to deal with that situation.

Weske responded that staff time is not really calculated in that manner so that isn't really quantifiable. Staff time is assumed on the application fee side, and the reimbursable from escrow portion is the consultant side. He mentioned that there are things that are not seen on the books such as handling 50 phone calls or responding back and forth on emails.

Moeller noted that the level of correspondence in working with a potential project applicant also often what conveys to staff that a particular application will need more escrow than others.

Council member Kvale stated that to meet the Exceptions status, she wonders if the City could put in a stop gap dollar amount by Resolution.

Moeller explained that if they did a stop gap dollar amount with a Resolution, as discussed earlier, she would need to work out the wording with City Attorney Thames; however, she added that you would really be doing the same thing as when you amend the Code because a Resolution would still need to be adopted every time the cap is changed.

Weske mentioned that the City does not have many variance requests from single family residences.

Moeller agreed that these applications have been rare; however, staff is aware that the homes and properties out there are flipping and staff is trying to be thoughtful in proposing Code amendments in order to look forward to what could be coming.

Council member Feldmann expressed the concern that he worries about a situation where someone has a large lot, they request a variance, and then a week later come in to subdivide it. He observed

that he just does not want anyone to be able to play games with it because of the language loopholes.

Moeller clarified that a subdivision would be subject to being a commercial purpose for profit, which means escrow would apply for that application. She added there are very few single family residential lots out there of a size that could support the scenario raised by Council member Feldmann and be subdivided.

Council member Kvale stated that she likes the idea of the Exceptions section for single residences that just need a simple variance.

The Council discussed the general operating mechanisms that are in place to ensure that large expenses are not incurred with WSB without additional fees.

Council member Dyvik confirmed with Moeller that the City returns any unused escrow amounts.

Moeller stated that she hopes to bring this back for action from the Council at their December 7, 2021 meeting. She noted that City Attorney Thames has reviewed what was sent to the Council and had already suggested a few minor language changes. She expressed her appreciation for Planning Consultant Rybak sharing the example from Mahtomedi with the City.

OTHER BUSINESS

Response to Comments by Orono City Council Regarding the Fire Department – Council member Dyvik indicated that there were some comments made at the recent Orono City Council bonding public hearing regarding the Long Lake Fire Department that he would like to address. He indicated that he feels there was some misinformation given that he would like to correct. He recalled that Orono Council member appeared to all be in agreement that they wanted to take over the Fire Department or have their own Fire Department, with commentary generally being that Orono is paying over 80% of the bill so they should be able to 'run the show' and should have some control. He stated that these are not true statements and Orono does share in the control of the Department because the budgets need to be approved by both Orono City Council along with the Long Lake City Council. Weske pointed out that the budget is created in the Fire Advisory Board. Council member Dyvik added that the Fire Advisory Board consists of two members from Long Lake City Council, two members from Orono City Council, and two members from Medina City Council. The notion that Long Lake is just kind of 'running the show' without allowing Orono any participation is wrong. He reported that there were comments made about Station 2 and it is true that Orono owns 100% of the station; but it was also stated that Orono owns all the equipment, which is not true, and any rolling stock that goes back and forth between the two stations is owned at a percentage of roughly 20% to 80%. He observed that Orono seems to have issue with paying 80% of the bill, but he explained that the formula is because Orono is getting 80% of the service. He felt like the suggestion they were making is that if they took over ownership there would suddenly be no cost to them, but the cost of operation would still be the same. A comment was made that Orono could make the Fire Department more affordable and he is not sure how they think that would happen because costs do not just go away and they would still have to take care of the service coverage. Council member Dyvik gave a brief background on why Long Lake switched from Orono Police to Wayzata Police coverage. He noted that he would not go through all the comments from the Orono Council meeting, but he wanted to make it clear that Orono may pay 80%, but the reason is because they use 80% of the services and to imply that it is not a shared arrangement is inaccurate. He emphasized that the suggestion that Orono has had no control in decisions is also not correct.

Appreciation to Public Works – Council member Joyce acknowledged the City's Public Works team because they had done a very nice job taking care of a sizable branch that had broken off of a tree that was overhanging the sidewalk near her home.

ADJOURN

Mayor Miner adjourned the meeting by general consent at 7:36 pm.

Respectfully submitted,

Scott Weske
City Administrator